

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEXTERITY SURGICAL, INC.	:	
	:	CIVIL ACTION
v.	:	
	:	No. 00-5789
TYCO INTERNATIONAL, ET AL.	:	

ORDER-MEMORANDUM

Ludwig, J.

AND NOW, this 17th day of August, 2001, the dismissal motion of defendants Tyco International, Ltd. and United States Surgical Corp. is granted, and this anti-trust action is dismissed. Fed. R. Civ. P. 12(b)(6).¹ Jurisdiction is federal question. 28 U.S.C. § 1331.

This action charges defendants with monopolization of the distribution market for hernia repair surgery repair products. Cmplt. ¶¶ 28-41. Plaintiff Dexterity Surgical, Inc. is a distributor of surgical products, including balloon dissectors, tackers, and ancillary products used in performing preperitoneal laparoscopic hernia repair surgery. Id. ¶¶ 3, 14. Defendant U.S. Surgical is a manufacturer of sophisticated surgical products, and defendant Tyco is a manufacturing and service company and is the parent corporation of U.S. Surgical. Id. ¶¶ 7, 8.

The facts of this case are substantially similar to those in Precision Surgical v. Tyco, 111 F. Supp. 2d 586 (E.D. Pa. 2000) (Ludwig, J.). In that action, Precision Surgical sued Tyco and U.S. Surgical under the Sherman Act, 15 U.S.C. § 2, for the same conduct as is alleged here – the acquisition by U.S. Surgical of the two primary manufacturers of balloon dissectors and its subsequent termination of a distribution contract with plaintiff in order to distribute the product

¹ Under Fed. R. Civ. P. 12(b)(6), the factual allegations in the complaint are accepted as true, all reasonable inferences are drawn in the light most favorable to the plaintiff, and dismissal is appropriate only if it appears plaintiff could prove no facts that would entitle granting relief. Doe v. Delie, No. 97-3019, 2001 WL 817680 (3d Cir. July 19, 2001).

itself.² The action was dismissed for lack of antitrust standing inasmuch as an antitrust injury was not alleged to have been sustained by plaintiff Precision Surgical, Inc. See summary of complaint, Precision Surgical, 111 F. Supp. 2d at 590. Here, Dexterity, like Precision, was a distributor for one of the two manufacturers of balloon dissectors acquired by U.S. Surgical. The question now is whether there is a material standing to sue distinction as between these two cases.

An alleged factual difference is that Precision had a distribution contract with Origin Medsystems, Inc., which was purchased by defendants in July 1999, four months before their acquisition of General Surgical Innovations, Inc., in November, 1999. On the ground that Dexterity had a contract with General Surgical, it maintains that U.S. Surgical's direct sales through Origin placed U.S. Surgical in competition with Dexterity during that four-month period; and consequently it has articulated standing. Pltf. mem. at 5. There may be a question whether Origin became immediately engaged in distribution, see Precision Surgical, 111 F. Supp. 2d at 587 (U.S. Surgical did not establish its own direct sales force until December 1999). However, on this motion to dismiss, the factual allegations of the complaint will be viewed in the light most favorable to the pleader. Fed. R. Civ. P. 12(b)(6).

This difference, however, does not amount to a viable distinction. From July, 1999 through November, 1999, Precision was also competing with U.S. Surgical as a distributor. Moreover, regardless of how the facts are viewed in the present case, the rationale of Precision leads to the same anti-trust law result.

"Vertical integration by the monopolist may deprive a former supplier or customer of a trading partner and thus cause injury-in-fact But this injury is no more an injury to competition when a monopolist integrates than when a competitor integrates." Id. at 589 (quoting

² For a more detailed description of the statement of alleged facts, see Precision Surgical, 111 F. Supp. 2d at 587-88.

3 Areeda & Hovenkamp, Antitrust Law § 756b); see also GKA Beverage Corp. v. Honickman 55 F.3d 762, 767 (2d Cir. 1995). The gravamen of Dexterity's injury, like Precision's, was the termination of its distribution contract upon defendants' vertical integration. This does not constitute an antitrust injury. Id. at 590.

Dexterity also perceives³ that "further development of the proper application of antitrust standing in Third Circuit caselaw . . . [supports its contention] that it is generally improper to dispose of an antitrust claim for lack of standing when the injury alleged is 'inextricably intertwined' with the injury to competition." Pltf. mem. at 4. It refers to Carpet Group International v. Oriental Rug Importers, Inc., 227 F.3d 62 (3d Cir. 2000) (a rug trade show operator was held to be enough of a competitor with a rug importer/exporter to have antitrust standing). Nevertheless, antitrust standing is essentially a fact-based analysis. See Pace Electronics, Inc., v. Canon Computer Systems, Inc., 213 F.3d 118, 120 (3d Cir. 2000). Carpet Group does not announce a shift in the law but represents an application of the law of standing to its particular facts.⁴

Edmund V. Ludwig, J.

³ Dexterity would also distinguish itself from Precision in that it has uncovered evidence of antitrust violations to which Precision did not have access. Pltf. mem. at 5-7. But this puts the evidentiary cart before the standing to sue horse.

⁴ According to Dexterity's memorandum, undesirable price changes have followed defendants' monopolization. If true, the consumers of these products, the doctors, hospitals, insurance companies, and patients would be the direct victims with claims of standing to sue. Potential for duplicative recovery and the existence of direct victims are factors in antitrust standing analysis. Carpet Group, 227 F.3d at 76.